

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CONNECTU LLC,

Plaintiff,

v.

MARK ZUCKERBERG, EDUARDO  
SAVERIN, DUSTIN MOSKOVITZ, ANDREW  
MCCOLLUM, CHRISTOPHER HUGHES  
AND THEFACEBOOK, INC.,

Defendants.

CIVIL ACTION No.: 1:04-cv-11923  
(DPW)

MARK ZUCKERBERG, and  
THEFACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC, CAMERON  
WINKLEVOSS, TYLER WINKLEVOSS, and  
DIVYA NARENDRA,

Counterdefendants.

**Defendant Eduardo Saverin's Memorandum In Opposition To Plaintiff's Motion To  
Compel Responses To Interrogatories**

## **I. INTRODUCTION**

Plaintiff ConnectU's ("ConnectU's") Motion to Compel as to defendant Eduardo Saverin is without merit. Defendant Saverin has responded fully and completely to Interrogatory No. 18, the only interrogatory at issue in this motion that implicates defendant Saverin.<sup>1</sup> Contrary to ConnectU's assertions, defendants have supplied a detailed response to Interrogatory No. 18, a response that spans nearly two pages, setting forth factual bases for defendants' affirmative defenses. Neither the Federal Rules of Civil Procedure nor common sense requires more, and ConnectU has not pointed to any authority suggesting a further response here would be appropriate. For these reasons and the reasons set forth in Defendants Zuckerberg, Moskovitz, McCollum, Hughes, and Thefacebook, Inc.'s Memorandum in Opposition to ConnectU's Motion to Compel, ConnectU's Motion should be denied as against defendant Saverin.

## **II. FACTUAL AND PROCEDURAL HISTORY**

During the 2003-2004 school year, while a student at Harvard University, defendant Saverin became one of the founders of thefacebook. As a student majoring in Economics who had not taken any Computer Science courses, defendant Saverin focused on the business side of thefacebook.

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<sup>1</sup> The other interrogatories at issue in this motion do not concern defendant Saverin. Specifically, Interrogatory No. 6 seeks "false and defamatory factual representations about Mr. Zuckerberg and/or thefacebook.com," information irrelevant to defendant Saverin's defenses in this action. Interrogatory Nos. 9-14 and 16 seek information that defendant Saverin, who is not an officer or director of thefacebook, Inc., does not possess.

On April 7, 2005, ConnectU propounded eighteen interrogatories nominally directed to all defendants, but many of which do not concern Defendant Saverin. Since late 2004, Defendant Saverin has only been a shareholder of thefacebook, Inc. and therefore does not possess the information sought by several of the interrogatories. Defendants responded to ConnectU's interrogatories on May 31, 2005. Ignoring the distinctions among the defendants in this case, ConnectU has moved to compel further responses from Mr. Saverin.

### **III. ARGUMENT**

#### **A. Defendant Saverin Has Adequately Answered Interrogatory No. 18.**

A party seeking to show that responses to interrogatories are insufficient has the burden of proving that those responses are incomplete, inadequate, or false. *Continental Ins. Co. v. McGraw*, 110 F.R.D. 679, 682 (D. Colo. 1986); *Versatile Metals, Inc. v. Union Corp.*, No. 85-4085, 1987 U.S. Dist. LEXIS 13165, at \*4 (E.D.Pa. 1987). Here, ConnectU has utterly failed to show how Defendants' response to Interrogatory No. 18 is insufficient in any way. Interrogatory No. 18 seeks "in detail the factual basis for each of Defendants' affirmative defenses." Defendants, in a response that spans nearly two pages, set forth in detail numerous bases for their affirmative defenses.

Notwithstanding defendants' responses, ConnectU incorrectly asserts that "Defendants have not identified and described in detail the factual basis" for "any copyright misuse defense," "any lack of standing defense," "any lack of ownership defense," "any abandonment defense," "any license defense," "any laches defense," "any waiver defense," "any failure to mitigate damages defense," and "any unclean hands

defense." ConnectU's Motion to Compel Responses to Interrogatories, at 16-18 (emphasis added). ConnectU's assertions are patently baseless. On its face, defendants' response to Interrogatory No. 18 sets forth factual bases for defendants' affirmative defenses.

Defendants, in fact, provide *three* factual bases for the copyright misuse defense, *two* factual bases each for the defenses of lack of standing, abandonment, waiver, and laches, and the factual basis for the defenses of lack of ownership, license, failure to mitigate damages, and unclean hands.

ConnectU also erroneously contends that Defendants' response is inadequate because Defendants did not identify the *basis for the factual bases*. For example, ConnectU argues that Defendants must identify all the persons other than Defendants whose conduct resulted in Plaintiff's damages. However, ConnectU's Interrogatory No. 18 would be objectionably compound if it did seek that information, and in any event it merely seeks "the factual basis for each of Defendants' affirmative defenses"--information that Defendants have provided. Defendant Saverin need not respond further.

In this context, a district court's comments on written interrogatories in a complex action is worth noting:

written interrogatories to the defendants are not likely to be particularly helpful or useful to plaintiffs, and more likely than not, will only lead to unnecessary discovery disputes. *See e.g., Independence Tube Corp. v. Copperweld Corp.*, 543 F. Supp. 706, 720 (N.D. Ill. 1982) (the use of interrogatories by a discovering party may be quite limiting since such devices are "designed to identify discreet information or sources of information [and] not to elicit opinions on complex issues where the detailed cross examination allowed by deposition is imperative.").

*O' Connor v. Boeing North American, Inc.*, 185 F.R.D. 272, 277 (C.D. Cal. 1999).

In sum, ConnectU's motion to compel as to Defendant Saverin should be denied. Defendant Saverin has adequately answered Interrogatory No. 18.

#### **IV. CONCLUSION**

For the foregoing reasons, Defendant Saverin respectfully requests that the Court deny ConnectU's Motion against him.

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/s/ Daniel K. Hampton

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